

# Voters Change Cutoff Date, Add New Strikes

JUDGE J. RICHARD COUZENS  
SUPERIOR COURT OF PLACER COUNTY

As originally enacted, the three-strikes law specified that whether a particular crime qualified as a prior strike would depend on the interpretation of statutes that were referenced in the law as it existed on June 30, 1993. Crimes added to Penal Code sections 667.5 ("violent" felonies) and 1192.7 ("serious" felonies) after June 30, 1993, would not constitute new strikes without the amendment of the June 30 cutoff date. Accordingly, such crimes as carjacking (Pen. Code, § 215), conspiracy to sell drugs to minors (Health & Saf. Code, § 11055), and intimidation of witnesses (Pen. Code, § 136.1), all of which were added to section 1192.7 after June 30, 1993, did not constitute new strike offenses.

The requisite amendment to the law occurred with the passage on March 7, 2000, of Proposition 21, which adds sections 667.1 and 1170.125 to the Penal Code. The initiative adjusts the statutory interpretation date to March 8, 2000, the effective date of the new law, and specifically directs that any interpretation of the statutes is to include several new serious and violent felonies added by the initiative.

The shift in the cutoff date has the effect of picking up as new strikes any changes to the list of serious and violent felonies since June 30, 1993. Either because of this shift or because of new crimes listed in Proposition 21, strikes will now include convictions for such offenses as intimidation of a witness (§ 136.1), assault with a deadly weapon or firearm (§ 245(a)), discharging a firearm at an inhabited dwelling or aircraft (§ 246), making terrorist threats (§ 422), driving under the influence of alcohol or drugs and causing injury (Veh. Code, § 23153), conspiracy to commit any serious or violent felony (Pen. Code, § 182), and many others.

Courts must be sensitive to the date on which the current crime was committed. If the crime was committed prior to March 8, 2000, strike offenses are limited to those that existed on June 30, 1993. If the crime was committed on or after March 8, 2000, strike offenses are defined by the statutes as they existed on March 8, 2000.

The reference to June 30, 1993, March 8, 2000, or any particular cutoff date, however, does not limit the application of the law to named felonies existing on that date. Reference should be made to the entire text of the statutes defining serious and violent felonies to determine whether a prior conviction qual-

ifies as a strike. Although carjacking was not a named serious or violent felony on June 30, 1993, for example, the commission of carjacking with the use of a gun would qualify the crime as a strike under Penal Code sections 667.5(c)(8) and 1192.7(c)(8). (*People v. Nava* (1996) 47 Cal. App.4th 1732.) "The focus is on

gories [of section 1192.7(c)] were intended to be cumulative, and that in the case of the categories—like subdivision (c)(23)—that apply to 'any felony' if committed in a particular manner, a defendant's conduct may place him into the 'serious felony' classification under a number of different categories." (*People v. Equarte* (1986) 42 Cal.3d 456, 465.)

Unless legislation similar to Proposition 21 is enacted, it is doubtful that attempts by the Legislature to create new strikes by simply amending sections 667.5(c) and 1192.7(c) will be effective without amendment of



the criminal conduct described in section 1192.7(c) and not on whether a specific Penal Code section is listed." (*People v. Davis* (1999) 76 Cal.App.4th 1347, 1357 [emphasis in original].) It must be recalled that "the cate-

the cutoff date specified in both versions of the three-strikes law. The date of statutory interpretation is clear and unambiguous.

An attempted "end run" on the cutoff date occurred in 1996, when the Legislature amended

section 1192.8. Commonly referred to as "Courtney's Law," Assembly Bill 1985 added as serious felonies a number of crimes committed while intoxicated and resulting in the infliction of great bodily injury. The legislative history of AB 1985 clearly indicates that the drafters intended to designate these additional crimes as strikes, although the three-strikes law itself was not changed. The Legislature attempted to avoid the effect of the June 30, 1993, cutoff date by stating in the new legislation, "It is the intent of the Legislature . . . to clarify that the crimes specified [in the legislation] have been, and continue to be, serious felonies within the meaning of subdivision (c) of section 1192.7."

A gratuitous statement by the Legislature, such as in AB 1985, declaring that an offense "has been, and continues to be," a serious or violent felony does not alter the fact that the amendment came after the cutoff date. Although no published case has yet addressed the issue, it is doubtful that such statements have any legal effect. ■



Judge J. Richard Couzens

*Judge Couzens is a member of the Judicial Council and past chair of its Criminal Law Advisory Committee.*

## Court Technology Update

# Court Technology Groups Formed

More than 100 representatives from 46 trial courts met February 23-25 at the Administrative Office of the Courts to form four trial court technology groups. The groups will manage resources and funding for technology within the judicial branch. Their formation was the first step in the implementation of the Tactical Plan for Court Technology, approved this year by the Judicial Council.

In his welcoming remarks, Administrative Director of the Courts William C. Vickrey noted that the judicial branch has a key opportunity to make a positive and lasting change in the way it manages technology and can, with the development of an appropriate plan, increase the likelihood of attracting funding to support technology initiatives. He also noted that Governor Davis is interested in technology issues and has requested that the judicial branch develop a comprehensive plan for improving the use of technology in the courts.

At its January 26, 2000, meeting, the Judicial Council unanimously approved the Tactical Plan for Court Technology, which provides a framework not only to obtain funding for statewide technology initiatives but to move the trial courts forward toward more coordinated and integrated technological solutions to their business needs.

Court representatives considered different models for forming the groups and ultimately settled on a model that acknowledges regional relationships and accommodates existing groupings of courts.

The trial court technology groups are charged with devising means to meet the policy objectives of the Judicial Council's Long-Range Strategic Plan, which include technology planning, infrastructure, court management systems, information standards, and communications. Each group will recommend a best method of meeting technology standards, develop a technology plan that incorporates the local needs of member courts, create an innovative proposal for Judicial Administration Efficiency and Modernization Fund allocations, develop and propose a distribution of group technology funding requests, and report the outcomes of funding received for technology expenditures.

To accomplish this charge, each group will review technology plans and inventories to develop its own shared vision for technology. The groups have been meeting and continue to meet to establish their governance structures and to begin developing funding requests for the fiscal year 2001-2002 budget process.

● For more information, see both the tactical plan and the minutes of the February 23-25 tactical plan meeting on the Serranus Web site at <http://serranus.courtinfo.ca.gov>.

### STATEWIDE RULES

Senate Bill 367, enacted as Code of Civil Procedure section 1010.6, specifies that by January 1, 2003, the Judicial Council "shall adopt uniform statewide rules for the electronic filing and service of documents in the trial courts of the state, which shall include statewide policies on vendor contracts, privacy, and access to public records." In response, the council has directed the Court Technology Committee (CTC) to develop and circulate statewide rules on electronic filing, privacy, and access. The draft state-

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## Trial Court Technology Groups

### NORTHERN CALIFORNIA

Butte, Colusa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Mendocino, Modoc, Nevada, Placer, Plumas, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Yolo, and Yuba.

### BAY AREA

Alameda, Contra Costa, Marin, Napa, Sacramento, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, and Sonoma.

### CENTRAL/COASTAL/DESERT/EASTERN SIERRA

Alpine, Amador, Calaveras, Fresno, Imperial, Inyo, Kern, Kings, Madera, Mariposa, Merced, Mono, Monterey, San Benito, San Joaquin, San Luis Obispo, Santa Barbara, Stanislaus, Tulare, and Tuolumne.

### SOUTHERN CALIFORNIA

Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura.



Mark Blecker  
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Mass tort cases, such as those involving asbestos, tobacco, and airplane disaster litigation, are an increasingly significant part of state court caseloads. As one observer noted, "judges are now players in the mass tort game."<sup>1</sup> To play effectively in this game, courts need an institutional vehicle for sharing information and providing timely and ongoing support to those responsible for the management of mass tort cases. To meet this need, the Conference of Chief Justices (CCJ), in partnership with the National Center for State Courts (NCSC) and the Federal Judicial Center (FJC), has initiated a strategic plan to develop and deliver a mass tort curriculum. The curriculum, which will be designed for state and federal judges and court administrators who are assigned to mass tort cases, will incorporate lessons already learned.

Any technique for managing mass tort cases must involve both state and federal courts. The litigation process in one system affects the litigation process in the other. CCJ will develop an educational curriculum in cooperation with the FJC, which is the research and training arm of the federal courts and other agencies of the federal judiciary. CCJ has asked the State Justice Institute (SJI) to be a partner in this national effort by funding two pilot educational sessions to be administered by the Institute

# The Mass Tort Phenomenon

## A Strategic Plan for State-Federal Collaboration

MARK BLECKER  
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NATIONAL CENTER FOR STATE COURTS



for Court Management (ICM).

There is a tendency in these complex cases to turn to federal legislation to mandate a "one size fits all" solution to the issue. Improving state protocol and supporting strategies for cooperation between federal and state courts will provide a solution that can take account of case-by-case resolution, is consistent with the principles of federalism, and will test the feasibility of using uniform protocols to achieve consistency among several systems. Such a strategy involves information sharing among many disciplines. To help in this effort, CCJ will use an advisory committee consisting of state and federal judges, court administrators, practitioners, and academicians. A vehicle for sharing information could be a "permanent method of insuring a more effective state marketplace of litigation."<sup>2</sup>

A great amount of information addressing mass tort litigation has been accumulated, including *Managing Mass Tort Cases*, a product of the 1995 National Mass Tort Conference;<sup>3</sup> *Report on Mass Tort Litigation* by the U.S. Judicial Conference Advisory Committee on Civil Rules

and the Working Group on Mass Torts;<sup>4</sup> a recent RAND Institute report; and a mass torts symposium at the University of Pennsylvania, November 11-12, 1999.<sup>5</sup> These efforts have extensively documented the experiences of managing such cases to date. The experiences, however, are not complete. The mass tort litigation process continues to evolve, and courts must prepare accordingly. Each new type of mass tort poses a new set of challenges for state and federal courts in their efforts to ensure that the litigation process produces equitable resolutions of the issues without overwhelming state and federal judicial processes. CCJ's plan creates an awareness of this evolution and of the court's role as a problem-solving institution in this area by creating a forum in which state and federal courts and other disciplines can exchange information.

Not only must judges and court administrators consider the impact of mass tort litigation on them today; they also must be aware of its future impact. As a result, courts must have the requisite tools at the time they need them, independent of the federal or state judicial system in which they are operating.

CCJ has structured its plan to ensure that the curriculum goes beyond simply communi-

cating the knowledge already accumulated; it updates information on a timely and ongoing basis. The most suitable tactic is to document the lessons learned from new experiences and incorporate them into a revised curriculum with innovative solutions. As the participants in the program apply the lessons learned, they will be invited to share their experiences at future programs, helping us all to meet the next mass tort challenge.

The mass tort phenomenon is likely to remain unless major changes occur in the law. Both the U.S. Senate and the U.S. House of Representatives have drafted legislation that would expand federal jurisdiction over these types of cases. However, passage of such legislation is not anticipated in the near future. Therefore, courts must take control and plan for the evolution of mass tort litigation.

● For more information, contact Mark Blecker at 800-532-0204; e-mail: mblecker@ncsc.dni.us.

1. McGovern, *Toward a Cooperative Strategy for Federal and State Judges in Mass Tort Litigation*, Mass Torts: A Symposium, November 11, 1999.

2. *Id.* at page 26.

3. National Center for State Courts, November 10-13, 1995, funded by the State Justice Institute.

4. February, 15, 1999.

5. Mass Torts: A Symposium, sponsored by the David Berger Program on Complex Litigation and the *University of Pennsylvania Law Review*, Philadelphia. ■

## Nominees Sought for Improvement of Justice Award

The Foundation for the Improvement of Justice, Inc., is accepting nominations for its annual awards program. This private, not-for-profit institution was founded in 1985 for the purpose of improving local, state, and federal systems of justice in the United States.

The foundation encourages such improvement by recognizing and rewarding accomplishments in nine categories: simplification of the law, crime prevention, child protection, speeding the process, effecting restitution, crime victims' rights, alternative sentencing, reducing recidivism, and lowering costs. Other significant efforts are considered as well. The awards recognize innovative programs that have proven effective and can serve as models for others in the administration of justice.

The foundation annually rewards up to 10 programs with a certificate of appreciation, a commendation bar pin, a medal, a check for \$10,000, and an invitation to an awards banquet in Atlanta.

The deadline for receipt of this year's nominations is June 1.

● For more information, contact the Foundation for the Improvement of Justice, Inc., 201 Saint Martin Drive, Suwanee, GA 30024, 770-831-9411; fax: 770-831-9896.

## Court Technology

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wide rules are scheduled to be completed in January 2001, in time for the circulation-for-comment cycle.

Privacy and Access to Electronic Information. The CTC has created a subcommittee and contracted with an attorney and a legal researcher to develop proposed rules of court and legislation that delineate the courts' responsibilities for providing access to, and protecting privacy interests in, records that they maintain electronically. The subcommittee will work on the following preliminary tasks:

▼ Identifying federal and state constitutional issues related to privacy and access;

▼ Identifying all existing and proposed California and federal legislation and rules of court that govern or are likely to have a direct or indirect bearing on privacy and access issues;

▼ Identifying conflicts in this existing or proposed legal authority;

▼ Researching existing and proposed legislation and rules of court in other jurisdictions with a view toward identifying models that might assist the committee in developing California-specific solutions to privacy and access issues;

▼ Identifying policy issues not addressed in existing law; and

▼ Drafting and providing analytic support for legislation or rules of court that account for courts' existing responsibilities, recommending means of reconciling conflicting authority, and addressing gaps in policy.

Electronic Filing and Service Rules. The CTC has enlisted Michael Fischer of the Administrative Office of the Courts' Office of the General Counsel to assist with the development of statewide rules on electronic filing and service. These rules will build upon the foundation established in the Standards of Judicial Administration, which provide high-level functional guidelines for electronic filing and service. The rules will include the following key components:

▲ Definition of terms, such as *time of filing*, *signature*, *elec-*

*tronic record*, and *electronic filing system*;

▲ Types of proceedings to which electronic filing applies;

▲ Technical issues of electronic filing, including method of filing (e.g., Internet, separate system, e-mail attachment), security issues, server availability, failure after receipt, encryption, and format of files;

▲ Requirements of the filer, including protection of the integrity of the court's computer systems, positive identification through digital signatures, filing fees, and fee waivers;

▲ Requirements of the court, including notice of receipt or lodging, notice of filing or acceptance, notice of rejection, and issuance of summons;

▲ Conditions of use of electronic filing, such as mandatory and permissive electronic filing;

▲ Issues related to electronic service of documents, including notice of change of e-mail address, proof of electronic service, and consent by use of electronic filing; and

▲ Issues related to production of original documents and public access to electronically filed documents. ■

## Education & Development

# CJER BENCHTIPS

# Doing Legal Research With CJER's Benchguides CD-ROM

The California Center for Judicial Education and Research (CJER) released the third edition of its *California Judges Electronic Benchguides* CD-ROM, which contains 22 criminal, civil, and juvenile law benchguides. Judges will find the software familiar and easy to use because it is the same program that powers LawDesk.

Here are some of the features of the *Benchguides* CD-ROM:

Navigation. Just click on the benchguide name and you will be taken to the first page of that benchguide. Then you can scroll through it using the vertical scroll bar, or you can reach a particular section by clicking on its title in the Table of Contents.

**Viewing.** The contents of the CD-ROM can be viewed in different ways. You can show multiple panes on the screen by displaying the text of the benchguide together with the Table of Contents and the search results.

**Hypertext Links.** Click on any cross-reference in the text, and you will jump to the referenced section. Click on any highlighted case, and you will go directly to the text of the case as it appears in the official reporter.

Simple and Advanced Searches. You can perform simple searches. For example,

you can search for a case by simply typing the name of a party in the query box. The program will search through all the benchguides or selected benchguides and list the results in their context.

You can perform advanced queries by inputting a series of key words with connectors, just as you would in LawDesk. The program also carries out Boolean searches and searches with wild-card characters.

Highlighting and Annotating the Text. The *Benchguides* CD-ROM contains annotation tools that enable the user to customize information. One of these tools is the electronic highlighter pen, which allows you to highlight text in different colors. You can also add your own notes to the benchguide text by using the "sticky notes" feature.

Judicial officers can order the CD-ROM at no charge by calling Kathy Pearce at CJER, 415-865-7805. Once you are on the mailing list, you receive updates automatically.

## RESOURCES

***Click for Latest  
Court Stats***

The Judicial Council's annual *Court Statistics Report*, which provides detailed statewide caseload statistics for fiscal year 1998–1999 as well as 10-year trend data on a wide range of court business, will be available at the end of May on the California Courts Web site at [www.courtinfo.ca.gov/reference/documents/](http://www.courtinfo.ca.gov/reference/documents/). Comprehensive individual county data will be posted at a later date.

## Courthouses in Schoolhouses

The Administrative Office of the Courts is using the 150th anniversary of the California courts as an opportunity to educate the public on the contributions and workings of the state judiciary. The agency has designed and produced a commemorative poster, featuring historic courthouses from all 58 counties, to distribute to approximately 7,000 California middle- and high-school civics teachers.

The posters will be accompanied by resources and guidelines for discussion and activities, such as arranging a field trip to a local courthouse, inviting a local judge to address a classroom, and staging a mock trial. Displayed in classrooms, the posters are designed to serve as catalysts for lively discussions about the role of courts in the community and students' rights and responsibilities under the law. The posters, which will first be delivered to local courts, are scheduled to arrive at schools this fall.

Offers Administrative Director of the Courts William C. Vickrey, "We hope this experience will give youth an opportunity to better understand the justice system that both serves them and requires their participation."

The printed version of the statewide data will be sent to presiding judges, court executive officers, select media, and interested others. However, the county-by-county data will be available only on the Web site and can be downloaded as needed. Presenting these statistical tables and charts on the Web site is part of the council's effort to use current technologies to make court information more accessible and easier to review.

The *Court Statistics Report* is a companion to the *2000 Judicial Council Annual Report: Foundations for a New Century*, which summarizes programs to improve public access, fairness, and court administration. The annual report was released to courts and to the legal and media communities in November 1999 and can also be found on the Web site.

● For more information, contact the Public Information Office at 415-865-7740; e-mail: [pubinfo@jud.ca.gov](mailto:pubinfo@jud.ca.gov).

***Appellate  
Advocacy  
College***

The Judicial Council's Appellate Indigent Defense Committee and the California Appellate Projects are co-sponsoring a two-week training program in May for attorneys who represent indigent criminal appellants. The goal of the program is to increase the number of panel attorneys who are qualified to accept independent appointments in complex criminal cases.

The seminar, to be held May 15-26 at the Judicial Council Conference Center, will address essentials of research and advocacy as well as key substantive areas of law. Intended for attorneys who are committed to dedicating a substantial portion of their practices to appellate criminal defense, the program will also cover business skills and practices required of self-employed lawyers. This intensive two-week seminar will be followed by an 18- to 24-month period of increased case assignment and enhanced case-by-case assistance from an experienced project attorney.

● For more information, contact Donna Drummond, Appellate Court Services, 415-865-4249; e-mail: donna.drummond@jud.ca.gov.

**Conference  
Spotlights  
Family Violence**

The Judicial Council's Center for Families, Children & the Courts, in collaboration with the council's Family and Juvenile Law Advisory Committee and the California Center for Judicial Education and Research, is

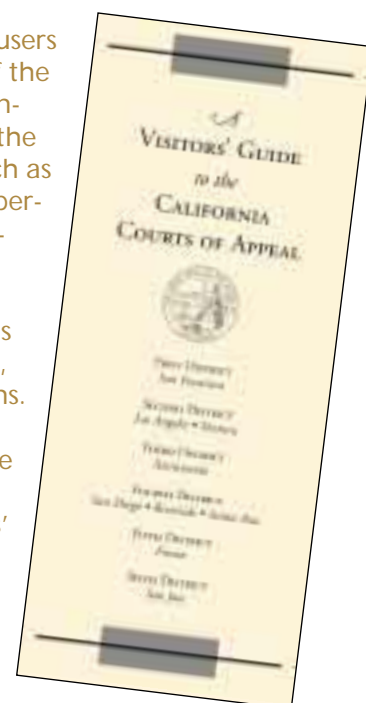
## New Brochure for Courts of Appeal Visitors

The Administrative Office of the Courts (AOC) has developed and distributed to the courts a concise and easy-to-read brochure summarizing the role and procedures of California's appellate courts, titled *A Visitor's Guide to the California Courts of Appeal*.

The brochure provides court users and visitors with an overview of the appellate process and helps to increase public understanding of the court system. It covers topics such as jurisdiction, structure and membership, and the individual steps involved in filing an appeal. The brochure explains the appellate process, including briefs, appeals panels, oral argument, opinions, and review of appellate decisions.

The brochure is one of three visitors' guides to the courts. The Supreme Court brochure was published last fall, and a visitors' guide for the trial courts is scheduled to be distributed this summer.

● For additional copies of the brochure, please contact the Public Information Office at [pubinfo@jud.ca.gov](mailto:pubinfo@jud.ca.gov) or 415-865-7440.



sponsoring Family Violence and the Courts: A Coordinated Response, its annual conference on family violence, May 18–19, 2000, in Los Angeles. The conference brings together representatives of the courts and the community to address family violence issues and to strengthen family/domestic violence coordinating councils.

New to the conference this year is a performance titled *(Un)common Ground*, produced by the Soapstone Theatre Company in collaboration with the San Francisco Sheriff's Department and Community Works. The 11-member performing ensemble, which has played to sold-out audiences, features female survivors of violent crime and male ex-offenders. *San Francisco Examiner* columnist Stephanie Salter describes this innovative restorative justice program as "a dynamite evening of theater. . . . To say that it packs a powerful emotional and intellectual wallop is like saying that Tennessee Williams and Eugene O'Neill wrote some interesting American dramas."

The conference will feature workshops and plenary sessions showcasing model programs from around the state, as well as discussions of a variety of family violence issues by experts from the legal, social work, law enforcement, and related fields. Sessions will cover topics such as substance abuse, domestic violence courts, court and community collaboration, batterer intervention, threat assessment, the impact of domestic violence on children, teen dating violence, new legislation and case law, and domestic violence among the elderly.

● For more information, contact Tamara Abrams, Center for Families, Children & the Courts, 415-865-7712; e-mail: [tamara.abrams@jud.ca.gov](mailto:tamara.abrams@jud.ca.gov). ■